

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0321

HOUSE BILL NO. 1049

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to authorize circuit courts to adjudicate paternity and
2 establish custody in notice of support debt proceedings.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-7A-5 be amended to read as follows:

5 25-7A-5. The secretary of social services may initiate an action for support by issuing a
6 notice of a support debt, which shall be served without summons or other pleadings on the
7 alleged responsible parent in the manner provided for service of a summons in a civil action or
8 by certified mail, return receipt requested. The notice, whether based on subrogation power of
9 attorney, assignment of a support obligation established by a court, administrative order or
10 judgment or based on the furnishing of assistance by the Department of Social Services for any
11 dependent child or spouse, or based on the obligation fixed by chapter 25-7, or support due to
12 an obligee or another state who has applied for support enforcement services, shall contain the
13 following statements:

14 (1) The name of the dependent child or spouse for whom support is owed;

15 (2) The monthly support for which the parent is responsible, including a statement of the

1 debt accrued and accruing, and the monthly payment to be made on the state debt
2 accrued, or due to an obligee or another state who has applied for support
3 enforcement services, as established by:

4 (a) Subrogation to or assignment of a court or administrative order, judgment or
5 decree establishing a set or determinable amount of child or spousal support;
6 or

7 (b) Payment of assistance by the department for a dependent child or spouse where
8 there is no court or administrative order, judgment or decree;

9 (3) A statement that if the parent does not request a hearing within ten days from the day
10 of service, the secretary:

11 (a) Will request the court enter an order establishing the amount of child support,
12 accrued and accruing, which the parent is responsible for and the amount of the
13 total monthly payment due on the accrued debt to the state, or to an obligee
14 or another state who has applied for support enforcement services, and on the
15 monthly support obligation;

16 (b) May request that the court enter an order for health insurance coverage; ~~and~~

17 (c) May request that the court enter an order for genetic testing costs; and

18 (d) May request that the court enter an order adjudicating paternity and custody
19 of the child.

20 (4) A statement that the parent served with a notice of support debt may, within ten days
21 of the day of service of the notice of support debt, submit a written response to the
22 notice objecting to all or any part of the notice and requesting a hearing;

23 (5) A statement that an order entered under subdivision (3) of this section, establishing
24 the payment obligation of the parent is subject to collection action, including an order

1 for income withholding under this chapter, levy and execution under the laws of this
2 state or any other collection actions authorized by law;

3 (6) A reference to this chapter;

4 (7) A statement that an order for support entered under this chapter is filed with the
5 appropriate clerk of courts and is a lien as provided by law;

6 (8) A statement that if the parent has any questions he may telephone or visit the nearest
7 department office or consult an attorney;

8 (9) A statement that the parent has an obligation to report any change of address or
9 employment to the department; and

10 (10) Any other information the secretary finds appropriate.

11 Section 2. That § 25-7A-7 be amended to read as follows:

12 25-7A-7. If a parent is served with a notice of support debt under § 25-7A-5 and does not
13 request a hearing within ten days, the secretary of social services shall file, in the office of the
14 appropriate clerk of the circuit court, the notice of support debt, proof of service thereof, and
15 an application for an order for support. The court shall enter an order for support in accordance
16 with the child support guidelines set by statute, establishing the amount of child support, accrued
17 and accruing, for which the parent is responsible and the amount of the total monthly payment
18 due on the accrued debt to the state, or to an obligee or another state who has applied for
19 support enforcement services, and on the monthly support obligation. The court may also enter
20 an order for health insurance coverage ~~and~~, genetic testing costs, adjudicating the paternity of
21 the child, or establishing custody of the child. The secretary shall serve the parent an order by
22 certified mail, return receipt requested, at the parent's last known address, and shall file proof of
23 service.

24 Section 3. That § 25-7A-8 be amended to read as follows:

1 25-7A-8. If a person served with a notice of support debt under § 25-7A-5 contests paternity
2 or custody of the child, and the person is presumed to be the parent of the child in accordance
3 with the provisions of chapter 25-8, the secretary shall inform the responding party that an action
4 must be commenced in circuit court in accordance with chapter 25-8 in order to establish that
5 the person is not the father of the child or to establish custody. The notice of support debt, proof
6 of service, and the response shall be filed for the purpose of establishing the support obligation
7 as provided in § 25-7A-6. The establishment and enforcement of the obligation may not be
8 stayed pending the action for paternity or custody determination commenced by the respondent.